

United States District Court

for

District of Guam

FILED
DISTRICT COURT OF GUAM

APR 18 2006

MARY L.M. MORAN
CLERK OF COURT

**Report for Modifying the Conditions or Term of Supervision
with Consent of the Offender**
(Probation Form 49, Waiver of Hearings is Attached)

Name of Offender: **Carlomagno Sarmiento Alegre** Case Number: **CR 98-00278-003**

Name of Sentencing Judicial Officer: **Honorable Alex R. Munson**

Date of Original Sentence: **December 9, 1999**

Original Offense: **Importation of Methamphetamine, in violation of 21 U.S.C. § 952.**

Original Sentence: **60 months imprisonment followed by a five year term of supervised release with conditions: not commit another federal, state, or local crime; not illegally possess a controlled substance; refrain from any unlawful use of a controlled substance, submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter; not possess a firearm; comply with the standard conditions of supervision; participate in a program approved by the U.S. Probation Office for treatment of narcotic addiction or drug or alcohol dependency, which will include testing for the detection of substance use or abuse; maintain lawful employment; perform 300 hours of community service; and pay a \$100 special assessment fee.**

Type of Supervision: **Supervised Release**

Date Supervision: **October 6, 2003**

PETITIONING THE COURT

- ☐ To extend the term of supervision _____ years, for a total term _____ years.
- ☒ To modify the conditions of supervision as follows:

1. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed four drug tests per month, as directed by the probation officer.

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ORIGINAL

CAUSE

On September 2, 2005, the Ninth Circuit, in United States v. Stephens, No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. § 3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power.

This will allow for adequate time intervals between tests which will help facilitate the detection of use. It also provides for enough additional tests so that the pattern of testing will not be predictable to Mr. Alegre. To address the implications of United States v. Stephens, Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify the defendant's mandatory condition to set the maximum number of tests Mr. Alegre must submit. It is therefore recommended that the mandatory condition be modified as follows:

"The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed four tests per month, as directed by the probation officer."

Carlomagno Alegre is under the supervision of the Central District of California. U.S. Probation Officer Bonita Dixon reported that he is in compliance with his conditions of supervision.

Based on the information above, this Officer respectfully requests that the Court modify the conditions of supervised release, pursuant to 18 U.S.C. § 3583(d) as outlined above. Attached is Probation Form 49, Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision, with Mr. Alegre's consent to the modification.

Reviewed by:

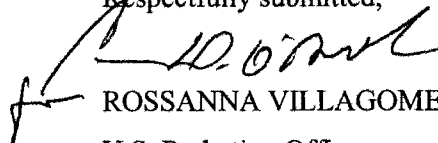


FRANK MICHAEL CRUZ

Chief U.S. Probation Officer

Date: **APRIL 14, 2006**

Respectfully submitted,



ROSSANNA VILLAGOMEZ-AGUON

U.S. Probation Officer

Date: **4.14.2006**

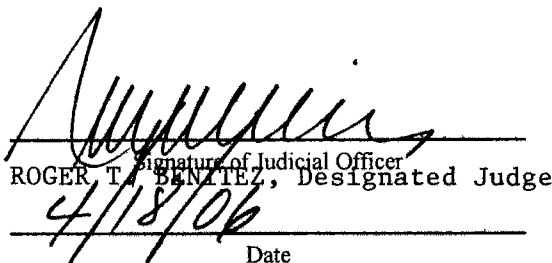
THE COURT ORDERS

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above.
- ☒ The Modification of Conditions as Noted Above.
- ☐ Other

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**DISTRICT COURT OF GUAM
HAGATNA, GUAM**



Signature of Judicial Officer
ROGER T. BENITEZ, Designated Judge

4/18/06

Date

ORIGINAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
PROBATION OFFICE

CONSENT TO MODIFY SUPERVISION ORDER

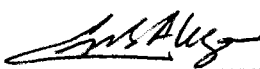
Re: ALEGRE, CARLOMAGNO SARMIENTO

Docket No.: 0993 1:98CR00278-003

I have been advised the U. S. Probation Officer will submit a petition and report to the Court recommending modification(s) of terms and condition of supervision, specifically:


As a condition of supervision, Mr. Alegre shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed four tests per month, as directed by the probation officer, pursuant to 18 USC 3583(d).

I consent to the modification(s) and waive a personal appearance before the Court.

 2/22/06

Offender Date

Attorney of Record Date

 2/22/06

U. S. Probation Officer Date